

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Paul Hathaway

**Date Application filed with the Town Clerk:** November 24, 2004

**Nature of request:** A Special Permit under Section 3.352.1 of the Zoning Bylaw to operate a Class II restaurant, with seasonal outdoor dining, serving alcohol, and live entertainment for special occasions, on the premises at 27 South Pleasant Street (Map 14A, Parcel 253, B-G Zoning District.)

**Legal notice:** Published on December 1 and 8, 2004 in the Daily Hampshire Gazette and sent to abutters on November 29, 2004.

**Board members:** Tom Simpson, Ted Rising, Susan Pynchon

**Submissions:** The petitioner submitted a management plan, floor plans of kitchen and dining area, sign and logo plan in color, and a sample menu.

The zoning staff submitted a memorandum outlining details of the application, dated 12/8/04.

**Site Visit:** December 14, 2004

The Board visited the interior of the site, which is compact and housed a small Italian restaurant for twelve years. The site is located in the main business section of Amherst, where a variety of restaurants and businesses are located. A jewelry store, an art gallery and a bank are immediately adjacent to the space under consideration. Municipal parking is located directly across the street.

The applicant noted the few proposed changes to the site – a protective wall at the entrance to cut drafts, a smaller convection oven, and the removal of a cooler in the dining area in order to provide more space.

**Public Hearing:** December 16, 2004

Paul Hathaway represented himself at the public hearing. He said that he wants to open a small French restaurant in Amherst. Previously Mr. Hathaway had operated a French restaurant in Brookline, MA and wanted to move to the Pioneer Valley for a less hectic lifestyle. The proposed restaurant will be located in the site of the former Il Pirata, and will retain essentially the same kitchen equipment and dining facilities. The minor changes noted at the site viewing – the protective wall at the entrance, the removal of the cooler,

and the change of oven - are the only ones proposed at this time. Seating in the previous restaurant was for around sixteen (16) indoors, but he would like to add more seating, up to twenty-six to thirty (26-30) if the building code allows. For outdoor dining, he is proposing four to six (4-6) at two small tables. Because the outdoor dining would be in the public way, the Select Board needs to approve the outdoor tables.

The applicant also would like to serve alcohol and provide live entertainment on occasion. The entertainment would only be for special functions and would not be amplified. Licensing for alcohol and entertainment is again the purview of the Select Board

The petitioner met with the Design Review Board on December 14, 2005. The awning and signs were approved. No outdoor lighting is proposed.

The petitioner said that he has already contracted with Amherst Waste Control for regular trash and recycling pickup. In addition, Mr. Hathaway said that architect Chris Riddle is preparing a narrative of the building code to accompany drawings for Inspection Services.

Charlie Atwood, 69 Pomeroy Lane, spoke in favor of the petition. He said that there is precedent for outdoor dining just down the street at La Veracruzana Mexican Restaurant.

Ted Rising moved to close the public hearing. Susan Pynchon seconded, and the vote was unanimous to close the hearing.

**Public Meeting:**

The Board noted that there has been a successful restaurant in this location for a number of years, and it sees no problems with this proposal. The Board recommends approval of the alcohol and entertainment license. Given the space limitations, the Board limited the outdoor seating to four (4).

The Board also approved the submitted colored drawings of the awning and logo (a cow, pig and a rooster) and the floor plan. The management plan was approved with the following modifications:

- 1) increase the seating capacity to twenty-six (26) indoors and four (4) outdoors, for a total of thirty (30)
- 2) extend the hours of operation from 12:30 AM to 1 AM closing.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, that:

10.380 and 10.381 – The proposal to operate a restaurant is suitably located in the central business district and compatible with other uses in the area. There are restaurants across the intersection on Main Street, along North Pleasant Street and a few buildings away on South Pleasant Street.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air

pollution, lights or visually offensive structures and accessories. There were no complaints concerning odors in the previous restaurant operation, and the venting system will be the same. Lighting will remain as is, and both the Design Review Board and the ZBA approved of the colors and logo for the restaurant exterior.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the proposed restaurant, since the facilities have already been successfully used for twelve years, and no changes are proposed other than a small protective foyer. The addition of a second restroom since the last Special Permit approval in FY1998 has improved the facilities as well.

10.387 – The proposal provides convenient and safe movement within the site and in relation to adjacent property since seating is limited both indoors and outdoors. Pedestrians on South Pleasant Street will not be hindered by the two outdoor tables. Associated vehicular traffic and parking is adequately provided for in the municipal district.

10.388 and 10.389 – Requiring deliveries to be made at the rear of the building ensures adequate off-street loading and unloading. Refuse and recyclables will be stored at the back of the building within a chain link fence, and will be removed by a commercial waste hauler in conformance with the Town requirements.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it will enhance the business district and provide a service to the residents.

### **Zoning Board Decision:**

Ted Rising moved to approve the petition. Susan Pynchon seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to APPROVE a Special Permit to Paul Hathaway to operate a Class II restaurant under Section 3.352.1 of the Zoning Bylaw, with seasonal outdoor dining, serving alcohol, and live entertainment for special occasions, on the premises at 27 South Pleasant Street (Map 14A, Parcel 253, B-G Zoning District) subject to the following conditions:

_____ TOM SIMPSON	_____ TED RISING	_____ SUSAN PYNCHON
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FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Paul Hathaway to operate a Class II restaurant under Section 3.352.1 of the Zoning Bylaw, with seasonal outdoor dining, serving alcohol, and live entertainment for special occasions, on the premises at 27 South Pleasant Street (Map 14A, Parcel 253, B-G Zoning District) subject to the following conditions:

1. The hours of operation shall be from 11 am to 1:00 AM, Tuesday through Sunday.
2. There shall be no more than five (5) employees on site at any time.
3. Any changes to the façade or exterior shall be reviewed by the Design Review Board prior to issuance of a building permit.
4. There shall be no deep fat frying on the premises.
5. Deliveries shall be made at the rear of the building.
6. Seasonal outdoor dining shall be for a maximum of four (4) patrons. Outdoor furniture shall be removed between the dates of November 1 and April 1.
7. No disposable plates and utensils shall be used for the outdoor dining.
8. The petitioner shall maintain the sidewalk clear of litter and trash in front of the restaurant.
9. Entertainment shall be limited to non-amplified music and vocals.
10. Any changes to the management or floor plans must be submitted to the Board for re-approval at a business meeting.
11. Trash and recyclables shall be stored inside the chain link fence behind the restaurant. The petitioner shall contract with a certified hauler for regular removal of all waste, including cooking oil/grease.
12. There shall be no delivery or take out service.
13. The permit shall expire upon change of ownership or management of the restaurant.

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TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE

